

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 5403 PCB JUAS 11-09 Department of Corrections

SPONSOR(S): Justice Appropriations Subcommittee, Glorioso

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Justice Appropriations Subcommittee	14 Y, 0 N	McAuliffe	Jones Darity
1) Appropriations Committee	14 Y, 7 N, As CS	McAuliffe	Leznoff

SUMMARY ANALYSIS

The bill conforms to the House of Representatives proposed Fiscal Year 2011-2012 General Appropriations Act by codifying proviso requiring the Department of Corrections (department) to competitively procure the provision of comprehensive correctional services through the outsourcing of the correctional institutions and felony community supervision services within Broward and Miami-Dade Counties. Such services must provide a cost savings to the state of at least seven percent less than current costs, and the provider must comply with all applicable federal and state laws, rules and standards. If approved by the Legislative Budget Commission, the department may award the contract.

Currently, ch. 957, F.S., provides the Bureau of Private Prison Monitoring in the Department of Management Services is responsible for entering into contracts for the design, construction, and operation of privately operated correctional facilities. This bill amends ch. 957, F.S., transferring all statutory powers and duties of the Bureau to the Department of Corrections. The bill will make the Department of Corrections responsible for overseeing the operational contracts of the seven existing private institutions in Florida, and authorizes the department to enter into, and monitor any new private prison contracts authorized by the Legislature.

The bill also eliminates the Basic Training Program within the department. The department operates a male and female Basic Training Program (BTP) for youthful offenders, age 24 and under:

- The female BTP is a 28-bed facility located at Lowell Correctional Institution in Lowell, Florida. Currently there are only four inmates housed at this BTP being supervised by a staff of 14.
- The male BTP is a 112-bed facility located at Sumter Correctional Institution in Bushnell, Florida. Currently there are only 77 inmates housed at this BTP that are supervised by a staff of 36.

This bill eliminates BTP. Youthful offenders currently enrolled in BTP will be transferred to another department program for youthful offenders called the Extended Day Program (EDP.)

Section 958.04, F.S., authorizes the department to petition sentencing judges to modify youthful offenders' sentences for admission into EDP for qualified youthful offenders.

The procurement of comprehensive correctional services must yield at least seven percent savings compared to the department's current operating costs. Current operational costs for institutions and community supervision in Miami-Dade and Broward Counties are approximately \$214 million, which would yield a savings of at least \$15 million.

The elimination of BTP represents a savings to the General Revenue Fund of \$2.7 million. See "FISCAL COMMENTS."

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Private Prisons

In accordance with ch. 957, F.S., the Bureau of Private Prison Monitoring in the Department of Management services is responsible for entering into contracts for the design, construction, and operation of privately operated correctional facilities. The Bureau may not enter into a contract unless it determines that the contract or series of contracts in total for the facility will result in cost savings to the state of at least seven percent over the Department of Corrections. Once the savings is determined, the Bureau enters into an operations and management contract with a private vendor to operate the facility for an agreed daily per diem. The per diem includes the cost of all facility operations and the cost of the contract manager employed by the Bureau.

The Bureau currently oversees the operational contracts of the seven private institutions in Florida: Bay, Blackwater River, Gadsden, Graceville, Lake City, Moore Haven, and South Bay correctional facilities.

The funding to pay the debt service and operations per diem to vendors for the facilities is appropriated in the Department of Corrections' annual budget. The funding for the Bureau's employees salaries are appropriated in the Department of Management Services annual budget.

The Department of Corrections is not currently authorized to enter into contracts with private entities to provide probation services.

Proviso in HB 5001 requires the Department of Corrections, in accordance with the requirements of ch. 957, F.S., to competitively procure the provision of comprehensive correctional services through the outsourcing of the correctional institutions and felony community supervision services within Broward and Miami-Dade Counties. The proviso requires the successful bidder to:

- Comply with all statutes relating to correctional institutions and community supervision;
- Ensure that correctional probation officers and correctional officers employed by the private entity are certified;
- Comply with all American Correctional Association standards;
- Comply with all rules of the department;
- Implement any standard or special conditions of supervision ordered by the court including but not limited to drug testing and electronic monitoring;
- Provide such services at a cost savings to the state of at least seven percent when compared to the department's current operating costs.

If the competitive solicitation process yields responses that meet the above requirements, the department must develop a transition plan and submit that plan to the Legislative Budget Commission by December 1, 2011. The department must also submit a cost benefit analysis which shows the department's current operating costs in those two counties, and the savings that would be generated from privatization which must be at least seven percent. If approved by the Legislative Budget Commission, the department may award the contract.

The department currently operates the following institutions in Miami-Dade and Broward Counties with a total inmate population of 6,630:

- Broward Correctional Institution (CI) housing 727 female adults and youthful offenders;
- Homestead CI housing 666 female adults and youthful offenders;
- South Florida Reception Center housing 1,468 adult male offenders;
- Dade CI housing 1,633 adult male offenders;

- Everglades CI housing 1,697 adult male offenders; and
- Four work release centers housing 439 adult males.

The department also currently supervises 30,395 offenders on community supervision and occupies 18 offices throughout Miami-Dade and Broward Counties.

Youthful Offenders

Florida's Youthful Offender Act¹ is to provide a sentencing alternative that will improve the chances for rehabilitation of an offender who:

- Is at least 18 years of age or has been transferred for criminal prosecution pursuant to ch. 985, F.S.;
- Has entered a plea to, or has been found guilty of, a felony, other than a capital or life felony, that was committed before the offender's 21st birthday; and
- Has not been previously sentenced as a youthful offender by a court.²

Section 958.04, F.S., provides that courts who elect to adjudicate and sentence a defendant as a youthful offender may:

- (1) Impose probation or community control;
- (2) Impose incarceration for up to 364 days, as a condition of probation or community control;
- (3) Impose a split sentence that provides for incarceration followed by probation or community control; or
- (4) Commit the youthful offender to the custody of the Department of Corrections (department.)³

These sentencing options are the exclusive sanctions that may be imposed for a court-adjudicated youthful offender,⁴ and, in general, the total sentence (probation or community control and incarceration) length may be no longer than six years.⁵

In cases where the court has elected adult, rather than youthful offender, adjudication and sentencing, the department may administratively classify a defendant as a youthful offender if that person:

- Is at least 18 years of age or has been transferred for criminal prosecution pursuant to ch. 985, F.S.;
- Has not been previously sentenced as a youthful offender by a court;
- Is less than 24 years old; and
- Has received a sentence that does not exceed 10 years.⁶

Unlike court youthful offender adjudication, which results in a limited sentence length and the sealing of court records, the department youthful offender classification only determines the programs and institutions in which youthful offenders may be placed.⁷ Such classification by the department does not affect the original sentence imposed by the court.⁸

Department of Corrections Youthful Offender Programming

Currently there are two programming tracks for incarcerated youthful offenders:

- The Basic Training Program (BTP) for youthful offenders approved to participate by the court.

¹ Sections 958.011-958.15, F.S.

² Section 958.04(1), F.S.

³ Section 958.04(2), F.S.

⁴ *Whitlock v. State*, 404 So.2d 795 (Fla. 3rd DCA 1981).

⁵ Section 958.04(2)(c), F.S.

⁶ Sections 958.03(5) and 958.11(4), F.S.; *Thomas v. State*, 825 So.2d 1032 (Fla. 1st DCA 2002).

⁷ Section 958.11, F.S.; *Lezcano v. State*, 586 So.2d 1287 (Fla. 3rd DCA 1991).

⁸ Section 958.11, F.S.; *Johnson v. State*, 586 So.2d 1322, 1324-1325 (Fla. 2nd DCA 1991).

- The Extended Day Program (EDP) created by the department for all youthful offenders who are not assigned to the boot camp.

Although BTP is a statutorily-mandated program,⁹ EDP also emphasizes rigorous discipline, physical training, and positive personal development.

Basic Training Program (BTP)

BTP is a statutorily-mandated structured disciplinary program that lasts a minimum of 120 days and is based upon a military basic training model with:

- Marching drills,
- Calisthenics,
- A rigid dress code,
- Manual labor assignments, and
- Physical training with obstacle courses.¹⁰

In addition, training is provided in decision making and personal development, along with the required general education development and adult basic education courses, drug counseling, and other rehabilitation programs.¹¹ Successful completion of BTP results in modification of the youthful offender's sentence.¹² A BTP participant who fails the program is placed in the general youthful offender population.¹³

Candidates for BTP are selected by the department from the entire youthful offender population and not only from those recommended by the courts. Candidates cannot be impaired, must be able to engage in strenuous physical activities, and have never been imprisoned in a state or federal facility.¹⁴ The department's selection process must also include review of the candidate's criminal history and assessment of the potential rehabilitative benefits of the boot camp.¹⁵ If a youthful offender meets these qualifications and is selected for participation, the department must seek permission from the sentencing court to place him or her in the BTP.¹⁶

The department operates a male and female Basic Training Program (BTP) for youthful offenders, age 24 and under:

- The female BTP is a 28-bed facility located at Lowell Correctional Institution in Lowell. Currently there are currently only four inmates housed at this BTP being supervised by a staff of 14.
- The male BTP is a 112-bed facility located at Sumter Correctional Institution in Bushnell, Florida. Currently there are only 77 inmates housed at this BTP that are supervised by a staff of 36.

Approximately two-thirds of the 1147 youthful offenders who entered the BTP during the five-year period from 2005 through 2009 completed the program and had the remainder of their sentence modified.¹⁷

Extended Day Program (EDP)

Only a small percentage of youthful offenders can take part in the basic training program, but the Legislature mandates that enhanced program services be provided to all youthful offenders.¹⁸ The EDP

⁹ Section 958.045, F.S.

¹⁰ Section 958.045(1), F.S.

¹¹ *Id.*

¹² Section 958.045(8)(d), F.S.

¹³ Section 958.045(5)(a), F.S.

¹⁴ Section 958.045(2), F.S.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ "Youthful Offender Designation in the Department of Corrections." Senate Committee on Criminal Justice. Interim Report 2011-114, October 2010.

was created by the department to fulfill this mandate in a structured way.¹⁹ EDP is a regimented program that takes up 16 hours a day Monday through Saturday with work, academic and vocational counseling, personal development, and self-betterment programs.²⁰ Sunday is used for religious services, visitation, parental support, and independent activities.²¹

EDP consists of 3 phases, with participants in each phase distinguished by the color of their cap:²²

- The Orange Cap phase is a two-week orientation to familiarize the youthful offender with what is expected of him or her. It is a basic training phase characterized by physical training, regimented discipline, and constant supervision. Inmate needs assessments are conducted during this phase so that programming can begin during the next phase. An Orange Cap must pass an evaluation on the orientation materials in order to advance to Phase II.
- The Red Cap phase requires the youthful offender to participate in vocational, academic, and betterment programs and assumes a standard work assignment. Rigid discipline and structured physical training continues six days a week, but Red Caps have less personal supervision than Orange Caps and they may also be allowed limited privileges. It takes at least 4 months to complete the Red Cap phase.

Requirements for promotion to the next phase include:

- Having a good disciplinary and inspection record,
- Making positive achievement in vocational or academic courses,
- Enrolling in at least one personal achievement or substance abuse program, and
- Demonstrating high regard for positive discipline and respect toward self, staff, and others.

Promotion also requires appearance before a staff evaluation board at which the youthful offender must explain his or her personal self improvement plan to the board, including short and long term goals and how the goals will assist in improving areas of deficiency.

- The Blue Cap phase is the final level of EDP. A youthful offender who is promoted to Blue Cap status is a role model for other youthful offenders and is expected to be a positive example to his or her peers. Blue Caps are continuously evaluated to ensure that they are maintaining performance in responsibility, drill, work assignments, and education programs. Blue Caps can become peer facilitators and assist staff with certain activities, but only a few additional privileges are available to them.

Approximately 241 youthful offenders are currently in Blue Cap status.

The department is authorized by statute to recommend that the sentencing court modify the sentence of a successful EDP participant.²³ However, only two EDP sentences have ever been modified.²⁴ The department has apparently stopped recommending sentence modifications for successful EDP participants because of the lack of past success in obtaining sentence modifications.²⁵ It is unclear why judges have not been receptive, but it may stem from a lack of information about the additional programming and the level of discipline that is required to successfully participate in the EDP for an extended period of time.²⁶

¹⁸ *Supra* "Youthful Offender Designation in the Department of Corrections."

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² The following information regarding EDP phases is from *supra* "Youthful Offender Designation in the Department of Corrections."

²³ Section 958.04(2)(d), F.S.

²⁴ *Supra* "Youthful Offender Designation in the Department of Corrections."

²⁵ *Id.*

²⁶ *Id.*

Youthful Offender Recidivism Rates

In 2009, the department reported that the overall 36-month recidivism rate for inmates released from 2001 to 2008 is 33.1 percent.²⁷ Inmates who are under 25 years old at the time of release have the highest recidivism rate of any age group, increasing to 36 percent recidivism after 36 months and reaching beyond 50 percent before five years elapse.²⁸

The department recently calculated the three year recidivism rates for male youthful offenders released from 2001 to 2008 that either successfully completed BTP or EDP participants who reached the final level in EDP.²⁹ The data reflected that the youthful offenders who had reached the final level of EDP prior to release had a recidivism rate that was approximately five percent lower than the youthful offenders who graduated from BTP.³⁰

Effect of the Bill

Comprehensive Correctional Services

This bill codifies the proviso in HB 5001 (the General Appropriations Act) requiring the department, in accordance with the requirements of ch. 957, F.S., to competitively procure the provision of comprehensive correctional services through the outsourcing of the correctional institutions and felony community supervision services within Broward and Miami-Dade Counties.

The bill creates s. 944.1051, F.S., authorizing the department to enter into contracts with a private entity for the provision of the supervision of offenders on community supervision in Broward and Miami-Dade counties. A contract entered into pursuant to this section must:

- Offer a cost savings to the state of at least seven percent, as determined by the department. In determining the cost savings, the department must calculate all the cost components that contribute to the offender per diem, including all administrative costs associated with central, regional, and circuit office administration. Services which are provided to the department by other government agencies without any direct cost to the department shall be assigned an equivalent cost and included in the per diem;
- Require that the private entity comply with all statutes relating to the supervision of offenders on community supervision, all rules of the department, all court orders relating to offenders on community supervision, and all American Correctional Association standards;
- Require the department, in consultation with the private vendor, to establish high, reasonable, and achievable performance standards that the private entity must meet;
- Require the private entity to report to the department whether the private entity has met the established performance standards;
- Require the private entity to provide at least the same quality of services as that offered by the department;
- Require that correctional probation officers employed by a private entity be certified under 943.1395, at the private entity's expense; and
- Require the private entity to give first consideration for employment to employees of the department located in Broward and Miami-Dade counties.

The private entity entering into a contract with the department will be liable in tort with respect to the supervision of offenders under its supervision and for any breach of contract with the department.

The provisions of ss. 216.311 and 287.057, requiring a competitive bidding process, must apply to all contracts between the department and any private entity providing community supervision services.

²⁷ 2009 Florida Prison Recidivism Study Releases From 2001 to 2008, Florida Department of Corrections Bureau of Research and Data Analysis, May 2010, p. 11.

²⁸ *Id.*

²⁹ *Supra* "Youthful Offender Designation in the Department of Corrections."

³⁰ *Id.*

The bill authorizes the department to promulgate rules pursuant to chapter 120 specifying criteria for such contractual arrangements.

Currently, ch. 957, F.S., provides the Bureau of Private Prison Monitoring in the Department of Management Services is responsible for entering into contracts for the design, construction, and operation of privately operated correctional facilities. This bill amends ch. 957, F.S., transferring all statutory powers and duties of the Bureau to the Department of Corrections. The bill will make the Department of Corrections responsible for overseeing the operational contracts of the seven existing private institutions in Florida, and authorizes the department to enter into, and monitor any new private prison contracts authorized by the Legislature.

This authorizes the department to competitively procure the outsourcing of correctional institutions in Miami-Dade and Broward Counties as required by HB 5001. If approved by the Legislative Budget Commission, the department may award the contract.

This bill eliminates the Basic Training Program (BTP) within the department. Youthful offenders currently enrolled in BTP will be transferred to another department program for youthful offenders called the Extended Day Program (EDP.)

Section 958.04(2)(d), F.S., authorizes the department to petition sentencing judges to modify youthful offenders' sentences for admission into EDP for qualified youthful offenders.

B. SECTION DIRECTORY:

Section 1. Amends s. 945.0311, F.S., relating to employment of relatives.

Section 2. Amends s. 951.231, F.S., relating to county residential probation program.

Section 3. Amends s. 958.04, F.S., relating to judicial disposition of youthful offenders.

Section 4. Repeals s. 958.045, F.S., relating to youthful offender basic training program.

Section 5. Amends s. 943.10, F.S., relating to definitions of correctional probation officers.

Section 6. Amends s. 944.02, F.S., relating to the definition of an elderly offender.

Section 7. Creates s. 944.1051, F.S., relating to contractual arrangements with private entities for the supervision of offenders on community supervision.

Section 8. Amends s. 944.115, F.S., relating to the definition of employee.

Section 9. Amends s. 944.72, F.S., relating to the Privately Operated Inmate Welfare Trust Fund.

Section 10. Amends s. 944.8041, F.S., relating to elderly offenders.

Section 11. Amends s. 945.215, F.S., relating to the Privately Operated Inmate Welfare Trust Fund.

Section 12. Amends s. 947.005, F.S., relating to the definition of department.

Section 13. Amends s. 948.001, F.S., relating to the definition of department.

Section 14. Amends s. 948.01, F.S., relating to probation and community control.

Section 15. Provides for the transfer of functions from the Bureau of Private Prison Monitoring to the Department of Corrections.

Section 16. Amends s. 957.04, F.S., relating to contractual requirements.

Section 17. Amends s. 957.06, F.S., relating to the powers and duties not delegable to a contractor.

Section 18. Amends s. 957.07, F.S., relating to cost saving requirements.

Section 19. Amends s. 957.08, F.S., relating to capacity requirements.

Section 20. Amends s. 957.14, F.S., relating to contract termination and control.

Section 21. Amends s. 957.15, F.S., relating to the funding of contracts.

Section 22. Amends s. 957.16, F.S., relating to expanding capacity.

Section 23. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

See "FISCAL COMMENTS"

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See "Fiscal COMMENTS"

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill would have a positive fiscal impact on a private entity that can meet all the requirements of this bill and is awarded a contract for comprehensive correctional services upon approval of the Legislative Budget Commission.

D. FISCAL COMMENTS:

HB 5403 requires the department to competitively procure the provision of comprehensive correctional services through the outsourcing of the correctional institutions and felony community supervision services within Broward and Miami-Dade Counties. Such procurement must yield at least seven percent savings compared to the department's current operating costs. Current operational costs for institutions and community supervision in Miami-Dade and Broward Counties are approximately \$214 million, which would yield a savings of at least \$15 million. These savings are not reflected in the General Appropriations Act as the outsourcing is contingent on Legislative Budget Commission approval.

The elimination of the Basic Training Program (BTP) represents a savings to the General Revenue Fund of \$2.7 million.

However, successful completion of BTP allows a youthful offender to have the remainder of his or her sentence modified. Every youthful offender that does not serve his or her entire sentence with the Department of Corrections results in cost savings to the state. In order for these cost savings to be realized, the department must petition the court to modify the sentences of qualified EDP participants.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the department to promulgate rules pursuant to chapter 120 specifying criteria for contractual arrangements provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 30, 2011, the Appropriations Committee adopted one amendment and reported the bill favorably as a Committee Substitute. The amendment conforms to the House of Representatives proposed Fiscal Year 2011-2012 General Appropriations Act by codifying proviso requiring the Department of Corrections to competitively procure the provision of comprehensive correctional services through the outsourcing of the correctional institutions and felony community supervision services within Broward and Miami-Dade Counties. Such services must provide a cost savings to the state of at least seven percent less than current costs, and the provider must comply with all applicable federal and state laws, rules and standards. If approved by the Legislative Budget Commission, the department may award the contract.

The amendment also makes the Department of Corrections responsible for overseeing the operational contracts of the seven existing private institutions in Florida, and authorizes the department to enter into, and monitor any new private prison contracts authorized by the Legislature.